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ABSTRACT

Edited versions of two conference papers are presented. The first paper, "The Debate Over Academic Unions and Faculty Governance," by Irwin H. Polishook, discusses why the concept of collective bargaining continues to be a significant issue in academe and is considered to be incompatible with faculty governance. It examines the union experiences at the City University of New York and Fordham University, the American Association of University Professors' perspective, and the shared governance issue arising in the 1980 Yeshiva University litigation (National Labor Relations Board vs. Yeshiva University). The second paper, "Senates and Unions," by Caesar J. Naples, addresses early predictions that the advent of collective bargaining meant the end of faculty governance. It covers the concept and reality of shared governance, particularly in the California model and in the evolution of the California State University tripartite process of governance. The two papers contain 12 references. (MSE)

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NEWSLETTER
NATIONAL CENTER FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUCATION AND THE PROFESSIONS

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GOVERNANCE: SENATES AND UNIONS

A) THE DEBATE OVER ACADEMIC UNIONS AND FACULTY GOVERNANCE

Irwin H. Polishook

Editor's Note: At the Seventeenth Annual NCSCBHEP Conference held in New York City in April of 1989, we asked Professor Irwin H. Polishook, President of the Professional Staff Congress, CUNY, and Caesar J. Naples, Vice Chancellor of Faculty and Staff Relations of the California State University to address the topic "Governance: Senates and Unions." This Newsletter contains edited versions of those presentations. These papers will appear in their entirety in, Power Relationships on the Unionized Campus, the Conference Proceedings.

COLLECTIVE BARGAINING AND GOVERNANCE

In June 1988, the AAUP Council issued its policy on faculty unionization: "Statement on Academic Government for Institutions Engaged in Collective Bargaining," which says, in part:

> Collective bargaining should not replace, but rather should assure, effective traditional forms of shared governance... From a faculty perspective, collective bargaining can strengthen shared governance by specifying and assuring the faculty role in institutional decision making... From an administrative perspective, contractual clarification and arbitral review of shared governance can reduce the conflicts occasioned by ill-defined or contested allocation of responsibility and thereby enhance consensus and cooperation in academic governance... When legislatures, judicial authorities, boards, administrations, or faculty act on the mistaken assumption that collective bargaining is incompatible with collegial governance, they do a grave disservice to the very institutions they seek to serve...[1]

For the AAUP that is a profound statement. It represents the reversal of a policy regarding collective bargaining and indeed, the end product of a process of change in its positions over a period of more than twenty years. What this statement says is that the union, first of all, is a faculty organization; secondly, that the union contract itself is a means of protecting and nurturing those academic concerns to which faculty relate; and finally, that collective bargaining is not a substitution for but a supplement to the normal governance on a campus. In other words, the union and its activity through collective bargaining are not to be seen as pushing out the experience faculty have had and the purposes to which faculty put their instruments of self-government.

This raises the question of why there has been so much interest in collective bargaining and governance as a subject. Even before unionization became a reality in the academic world more than twenty years ago, there was continuous discussion of the question: Will collective bargaining conflict with or supersede faculty governance? One reason, obviously, is that faculty as employees are different from employees in virtually every other type of setting, including many professional settings. So the thought was, since the faculty were different, the instrumentalities to which the faculty attach themselves should naturally be different from those of other workplaces.

There was also the thought that the very idea of a union is alien to a university. What gives this notion substance as an almost instinctive reaction is that it appears to challenge what is perhaps the last frontier of independent employment, namely, the faculty member as a kind of intellectual entrepreneur. It is very difficult to organize entrepreneurs to begin with; it would be virtually impossible to organize, some thought, the intellectual entrepreneur. Most of the other professions in the

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United States do have organizations, frequently very powerful associations, that have all the power of unions. The faculty were among the last to band together and organize. And part of the reason for that is the character of faculty, their individualistic self-perception, the professor, the status identification by which they differentiate themselves from other types of employees. So it was not difficult for all of us, whether favorable to unions or not, to hesitate before embracing the idea that we should be unionized like industrial sector workers.

Indeed, the concept of the industrial sector, industrial model, and industrial union, something we wanted to distinguish ourselves from, became a standard that was used—among ourselves and more so by management—to argue against the unionization of the faculty. Underlying the argument was the simple-minded conception, even among important scholars who study industrial relations and collective bargaining, that what goes on there is entirely or mostly an adversarial process involving tradeoffs and deals and bargains. What is more, this process was juxtaposed against an academic model and represented as a kind of corruption of the type of idealism that faculty feel is inherent in their own politics. I would venture to say, if I had to characterize faculty politics, in the ideal, it would be as a striving on the part of the academic community for consensus, rather than conflict. The collegial ideal is so sacred that people begin to think that it is the reality and they tend to forget, in the rendering, the amount of stress and conflict that really does exist in the academic community.

Moreover, the notion that there are strong faculty organizations that represent faculty glosses over the reality that they are limited to a very small number of institutions historically and are hardly characteristic of the entire broad band of institutions of higher learning in the United States. Believe it or not, Harvard is not like the rest of the country. Even Harvard and Columbia and Berkeley have their stress and difficulties. The places in which governance as we traditionally think about it is most firmly entrenched and always have been are in a minority among the institutions of higher learning in the United States. Do we still remember Senator Joseph McCarthy? During his heyday, witch hunts were conducted among the best academic institutions, and not only were the faculty cowed, but the faculty were cowed by administrators who were afraid to allow professors to exercise their best instincts in self-governance, to make judgments about whether their colleagues should be fired, whether their colleagues should be subject to the pressures and mandates that were imposed from outside the university. All of this is to say, the reality of what goes on in the marketplace of the academic community is really very different from what we think because we want to think it is different. It is very difficult to overcome that illusion. It renders us susceptible to arguments, slogans and all sorts of approaches by those who want the faculty to take particular positions on particular issues, but especially collective bargaining.

THE CUNY EXPERIENCE

The reaction of managers to the first demands for collective bargaining in our country something over twenty years ago was the formation of the Committee on Academic Freedom of the Association of American Colleges. The response at City University when it was on the verge of becoming the first major institution of higher learning to become unionized, was similar. Management reacted by creating a debate about compatibility, but it was mostly a device to discourage bargaining. Management used the bogey of incompatibility as an argument and a weapon, shamelessly and cunningly.

A document that the City University chancellor circulated when we first began to consider bargaining dated November 20, 1968 just over 20 years ago has a section on exclusivity which includes this passage:

> If a bargaining agent is chosen by the faculty, and that agent obtains an exclusive right of representation, the Board and administration of the University will be precluded by law (in bold type) from negotiating with any faculty groups, agencies or individuals except the organization designated as the exclusive collective bargaining agent.[2]

That is not what happened, nor has that been the reality of academic bargaining. Another section in this document, "Scope of Bargainable Issues" states:

> It is clear, however, that in some cases the demands of collective bargaining agents may be inconsistent with the traditions of college teaching as a profession.[3]

And it invoked what is still a current argument, the danger, threat, instinct of unions to interfere with everything. The chancellor goes on to say:

> The faculty now make many decisions which in industrial situations are considered prerogatives of management. They hire, fire and promote their fellow professionals and have the major responsibility both for the activities of their students as well as the educational program which is the primary reason for the existence of the institution.[4]

All of which is meant to suggest that if bargaining were to be adopted, the faculty no longer could act as managers—they would be debarred from that activity—with everything that would ensue from that, namely, the denial of their participation in shared governance and in the reality of professional control over those things for which you hire faculty anyway. None of which ever happened at City University, nor has it happened anywhere else since. A further

administrative response to collective bargaining was to bestow a university faculty senate. For the first time, in 1968, seven yeas after the creation of the university and, by happenstance, the same year as the first collective bargaining election.

THE FORDHAM EXPERIENCE

At Fordham University, where faculty collective bargaining narrowly lost, management suddenly discovered shared governance and began to create all sorts of faculty organizations. No university-wide faculty bodies existed. Management quickly began creating them as a way to ward off collective bargaining. Management said to the faculty, we want you now to play a part, to ward off collective bargaining, and if you do go ahead and unionize, you will be denied all of the normal and expected means of participating in the academic community, some of which were novelties at that time.

One document circulated in the Fordham campaign by the vice president of the institution, Raymond G. Hewitt, dated October 5, 1971, said:

> A successful unionization of the Fordham faculty would require a drastic alteration of our present system of shared governance. Given the formal labor-management relationship required by the collective bargaining process, the university could no longer share the governance of its affairs with the faculty. It is inconceivable that the faculty could—at one and the same time— assume the role of labor and management. The resulting conflict of interest is so obviously apparent that even the most ardent labor organizers find it difficult to dismiss.[5]

The election at Fordham was lost by a very narrow margin, while at CUNY the election was won by an overwhelming majority. The experiences at these two institutions are cited as instances of the antithesis set up by academic managers between collective bargaining and governance for the purpose of discrediting collective bargaining.

AN AAUP PERSPECTIVE

The AAUP developed arguments quite similar to the administrators'. Although they have not disappeared, these voices from the past sound strange articulating ideas that the AAUP has now disowned. Here is a former AAUP president:

> The AAUP generally rejects exclusive representation by unions or any other external agencies, because it has a different view of the proper organization of a faculty and of the faculty's position in that organization. Central to the AAUP's position is its commitment to the proposition that faculty members in higher education are officers of the colleges and universities. They are not merely employees.[6]

The subliminal message is that "employees" are people who work in boiler rooms and offices. The professors are not employees in that sense. They have direct professional responsibilities to their students, their colleagues and their disciplines. To a very considerable extent, faculty are part of management. That was the argument of AAUP, that governance and collective bargaining were incompatible, that the introduction of collective bargaining would create conflict. AAUP, like management, invoked a golden age of faculty shared governance which had never existed at most American institutions. They papered over all of the conflict inherent in academic life and introduced the threat of conflict as a new danger inherent in the alien and disruptive nature of bargaining.

Why were faculty willing to listen to it? One of the reasons is that the academy was in trouble. By the late 1960s and early 1970s, the university was in crisis for a variety of reasons: student revolt, the impinging of social and political issues on the university, the Vietnam War, all of which stirred up a pervasive feeling that was apocalyptic, that the world they knew was coming to an end. The very legitimacy of the university was being questioned. It is not hard to understand why an organization like the AAUP and its leaders would take a hard-line position against something new and threatening.

Besides, there was self-interest involved. The AAUP then was the leading organization in higher education, with approximately 95,000 members. Its numbers have dropped drastically since that time as membership in the organizations represented either by AFT or NEA has increased dramatically. So there was a defensive purpose in warding off the opposing organizations, as well as the conviction, which may have been genuine, that bargaining was not a good idea. It was a status quo reaction, maybe even a reactionary response, and, curiously, a reaction that defied the historical experience of the AAUP itself.

The arguments AAUP leaders, in concert with management, threw back at unions were the very same that were leveled against AAUP fifty years earlier as reasons why professors should not form their own association. They were not entirely absurd arguments; they were sincere.

THE YESHIVA ISSUE

Pop scholarship was thus invoked to corroborate the illusion of faculty as managers. It was spurious, insidious and significant. One of its legacies was this line of reasoning: If we have governance at Fordham, which we just created, and if we say to faculty at Fordham, we're going to give you a chance to participate in governance — admittedly under the control of the administration of the institution — nonetheless, with the appearance of shared governance, with participation that might be decisive

in some things — but without compromising the ultimate power of the administration over the process — if that's the case, aren't faculty truly operating the university? And then, aren't faculty like managers in the way they control things? And then, as it was alleged during the founding years of the AAUP, aren't faculty expected to identify with the institution so that they have an undivided loyalty, an identity of interest with the institution as defined by its administrators? There are chief managers and lesser managers, but they're all of one. If faculty have bargaining, that unity is impossible.

That was the argument at Fordham and CUNY. That was also the argument used by trustees against AAUP in 1915, and articulated by AAUP fifty years later. Successive presidents of the association repeated the contention that the faculty are really in control, hoping, by saying that, the faculty would forgo bargaining. They never thought, however, that by the same rhetoric bargaining would be rejected for faculty by the United States Supreme Court. The Supreme Court's decision in Yeshiva[7] is the ultimate conclusion of the argument about the relationship between faculty and governance: the faculty pervasively control the educational enterprise.

That myth has been engraved in stone because the independent union representing the Yeshiva faculty allowed management to establish the evidentiary record in this seminal case. The union did not describe the reality — of a faculty not really in control, with no meaningful role in the governance of the university, which is why the union was organized in the first place: The faculty senate had not met in many years; there were no universal governing bodies at all; the control of the institution by management was almost absolute. Instead, the union allowed administrators to fabricate a record. It was not done at the first test by the National Labor Relations Board. In fact, the appellate court, the Second Circuit, chastised the NLRB for not doing so, and proceeded to make up the record itself. The court held an evidentiary hearing and the administration responded without contradiction by the union.

The evidentiary record created by the Second Circuit Court was the experience on which the United States Supreme Court based its conclusions: Yeshiva is a "mature" university pervasively "operated" by a faculty whose control is "absolute". Those were the words of the United States Supreme Court. As a result, the Supreme Court held, on the basis of an ironic comparison to industry, an alignment of interest might be expected between what the institution is supposed to do and its management sets out as its mission and what the faculty should expect to do. Nobody would allow people who are operating the institution and controlling its decision-making to have a divided loyalty from that of the administration. Because the faculty are managers, they must have undivided loyalty, and if that is the case, they may not have collective bargaining. Notice the significant implication of the faculty's status as managers: As academic professionals, whether classroom or administrators or otherwise, they must, in the performance of their duties, have an undivided loyalty to the management of the institution, but, at the same time, remain autonomous and be expected to criticize. That independent function is usually different from what managers are permitted. Nonetheless, undivided loyalty is the test, and alignment of interest is the process and under those circumstances, the faculty cannot bargain under the protection of the law. Faculty are still free to organize in the private sector, but they can be fired and dismissed for it without so much as a word.

Is it hard to imagine what might happen at a mature private university some day under Yeshiva? In an institution which declared its policy to be the exclusion of unions, what might happen to a tenured faculty member who tried to organize a union? Would he/she be dismissed? Would academic freedom and tenure survive that challenge? The nature of Yeshiva and the thinking behind it, though the Court was divided 5 to 4, is such that it represents a threat not only to faculty unionization, but to academic freedom and shared governance as we understand it, an alien ideology undermining faculty as academic professionals who must be free and autonomous.

Yeshiva is the current reality, but its "facts" do not govern the present debate. After twenty years, most scholars who have studied the question have come to the conclusion that academic governance, however it is defined and however it manifests itself, and collective bargaining, in real experience over two decades, are entirely compatible. Professor Barbara Lee, for example,[8] in an article in The Journal of Higher Education, summarized the history to that point and arrived at the same conclusion. In fact, she said, not only her own findings but those of the majority of the scholars at that time were that they are not merely compatible; where governance exists it does not disappear, where it does not exist governance arises, and where it does exist it is generally strengthened by unionization. The experience is exactly the opposite of what had been predicted. There is a host of other writings including a very extensive study by Professor Margaret Chandler and Daniel Julius entitled, "Governance in Unionized Campuses".[9] They all reach the same conclusion. The data are exhaustive, the research has been done, and the results are in.

CONCLUSIONS

Why do people still assert faculty governance and collective bargaining are incompatible? And why do professors listen? Some people are still enamored of the illusion of shared governance, or of their idealized self-image as faculty, or of what administrators tell them; and, for obvious reasons, not only are people who know better willing to defy experience to say it, but the concept of incompatibility continues to be useful in the warfare over unionization. One of the significant lessons to be learned from this history is that ideological confusion can be dangerous to academic life. The

confusion that was engendered about faculty as management beginning in the 1960's, the arguments of AAUP presidents and other faculty leaders which paralleled those of administrators at Fordham and CUNY and elsewhere, and which led to Yeshiva, seems to suggest the wartime slogan: "Loose lips sink ships." What they have done is to try to sink the ship of collective bargaining, and they have indeed contributed to installing a formidable deterrent in the private sector. But they went far beyond that, beyond their intentions, through Yeshiva, to endanger the professor by creating a new threat to academic freedom, tenure and faculty governance.

I do not believe that the faculty owe undivided loyalty to the institution. That cannot be. Their loyalty must be to their profession and the obligations of that profession in the conduct of research and the dissemination of knowledge to their students. Undivided loyalty has no place in such a world. Professors can be denied the right to organize, the right of self-government or participation in governance, but they cannot be described ideologically as owing undivided loyalty to anybody except to themselves, to their individual integrity and to the collective integrity of their disciplines in the community of higher learning.

Academic professionalism will not outlast the coercion of institutional patriotism or the spirit of Yeshiva. Nor, can it condone management's ideological campaign against unions within the university. What faculty aspires to is the recognition by management that the common good can be served only in an academy bound together by enduring faculty rights and responsibilities. That goal transcends shared governance.

FOOTNOTES

1. American Association of University Professors, "Statement on Academic Government for Institutions Enaged in Collective Bargaining," Academe, 73, No. 6 (Nov.-Dec., 1987), pp. 25-26.

2. Office of the Chancellor, The City University of N. Y., "Collective Bargaining at City University? - issues and procedures," Nov. 20, 1968, p. 7.

3. Office of the Chancellor, p. 8.

4. Office of the Chancellor, p. 10.

5. Memorandum, Vice President Reiss, Fordham University, Oct. 5, 1971, quoted in Matthew W. Finkin, "A Faculty Perspective," in Raymond G. Hewitt, ed., The Effects of Faculty Collective Bargaining on Higher Education, (Wellesley, MA: New England Board of Higher Education, 1973).

6. R. S. Brown, Jr., "Collective Bargaining in Higher Education," Mich Law Rev, Mar. '69, p. 1070.

7. National Labor Relations Board v. Yeshiva University, 444 U.S. 672 (1980).

8. Barbara A. Lee, "Governance at Unionized Four-Year Colleges: Effect on Decision-Making Structures," The Journal of Higher Education, 50, No. 5, (Sept.-Oct., 1979), pp. 565-585.

9. Margaret K. Chandler and Daniel J. Julius, "Governance and Unionized Campuses," Thought and Action: The NEA Higher Education Journal, vol. 1 (Spring, 1985) pp. 17-30.

B) SENATES AND UNIONS

Caesar J. Naples

THE NATURE OF THE PROBLEM

In the early days of collective bargaining between faculty unions and universities, a cottage industry developed to showcase the predictive abilities of a generation of sages. These experts delivered what appeared to be profound—if cynical—observations about the future of collegial governance in the face of faculty collective bargaining. Senates, they said confidently, are doomed. Unions will quickly percieve them as antagonistic to collective bargaining. Administrations will soon recognize them as forums to provide "two bites at the same apple". And faculties will eschew them as ineffective "company unions," with no power or significance other than to set up an artificial dichotomy within the faculty with the inevitable effect of diluting faculty influence and energy. Management, they said, will cease consulting with senates because they will merely be "fronts" for the unions. Their agendas will be cleverly designed to further the goals of the collective bargaining agents and frequently, they said smugly, the very same faculty leaders will occupy leadership positions in both organizations. Quod Erat Demonstrandum!

I well recall years ago, in this very forum, one observer characterized collegial governance and senates as essentially dishonest forms of faculty-administration interaction. His explanation was, I believe, that senates exist at the sufferance of management. They have only such power as may be granted to them by the "bosses". Out of gratitude, I suppose, they would cave in on every issue of importance, sell out their faculty colleagues and provide the administration with a patina of propriety in its actions.

These are faculty members with tenure who view the institution with a sense of ownership justified by the likelihood that they will outlast every administrator. As is so well delineated in Yeshiva[1],

where faculty set standards for admission, academic progress and graduation; they hire, evaluate, promote, reward, punish themselves and their colleagues; they decide what to teach, who will teach it and when and how to teach it.

I don't know about you, but in my experience, I haven't found many faculty members — in senates or not — willing to roll over as the doomsayers predicted. I guess that is what was missing in the predictions of inevitable withering away of senates: real work experience — either with collegial governance or collective bargaining.

Now I will be quick to admit that in those early days there were some false indicators that could give those eager for the laurel a push in the wrong direction. There were a lot of issues, legal and otherwise, that had yet to be settled. And, they could easily mislead ivory tower theorists. For example, some were concerned, in those early days, that the principle of exclusivity would surely do senates in. That principle, otherwise known as the "to the victor belongs the spoils" principle, states that management may only lawfully deal with the union that won the election or had the majority of the bargaining unit signatures. And that the other unions have no legal status to represent anyone in the unit. It's a good principle, for both management and unions, but it's misplaced here. The fact that the successful union has the exclusive right to represent all persons in the bargaining unit with respect to matters within the scope of bargaining does not, of course, mean — directly or indirectly — that a senate may not consult with the administration on other matters not within the scope of bargaining such as curriculum, admission standards and the appointment of academic administrators.

There were probably other instances where both labor and management predicted or threatened the demise of collegial governance as the inevitable result of unionization, so that one of the first acts following the vote for a bargaining agent saw the administration and the faculty busily setting out to dismantle the senate. I recall meeting with a group of university presidents in Florida immediately following the election of the faculty union when one of them said "...but they promised that the senates would disappear when the union was elected!...."

Both collective bargaining and senate consultation are different forms of the same thing: faculty involvement in institutional decisionmaking. A faculty interested in enhancing its role in governance through collective bargaining is more likely to seek all possible forums for its expression rather than to reduce them. This is precisely what, in my experience, has happened. And, I wish to point out, the enhanced interest in senates is not only the prerogative of the faculty. Administrations have sought to encourage senates, as well. In both New York and Florida, moribund or non-existent systemwide faculty senates were developed or enhanced in the years following the advent of faculty bargaining. For a variety of reasons, I believe this to have been a wise move. There are many issues that are of concern to the faculty for which the administration wants or needs faculty involvement that are outside the traditional scope of bargaining. Issues of mission, role and scope of the institution, development of schools or individual programs are among them. Matters of educational policy, including admissions standards and conditions for the awarding of degrees, are other examples.

SHARED GOVERNANCE

The existence of the senate reaffirms the commitment of both the faculty and the administration to a collegial relationship. Although I quickly point out that the bargaining relationship can well be collegial also, I suggest that, during the early years of bargaining at least, the parties may be tempted to explore the full potential of what it means to have an adversarial relationship. One of the many reasons employees, in general, and faculties, in particular, may select a bargaining agent is to have someone who, on their behalf, can shake a fist under the nose of the administration. It is useful, then, to have a visible reminder that we are colleagues and have an ongoing commitment to a, perhaps less adversarial, way of dealing with issues.

It is helpful to keep in mind that collegial governance mechanisms such as senates continue to exist because the participants voluntarily support their existence, rather than because the law requires that the parties deal with one another as in the case of a collective bargaining relationship. Collective bargaining laws require the recognition of a bargaining agent selected by the faculty in accordance with law. Either management or the union can compel the other to sit at the table and bargain over negotiable issues. There are rules to govern the relationship and a labor board to interpret and enforce them. There is little that is voluntary in a collective bargaining relationship.

Collegial governance is quite different. At any time, if the administration believes that the senate is no more than the union seeking two bites at the apple, it can withdraw its attention and support from the senate. If the faculty perceives the senate as a device to fractionate its voice, it will cease to participate in senates. And if the union leadership views the senate as an institutional rival, it will seek to replace it or coopt it. Its continued existence is public testimony of the desire of the parties to maintain collegiality.

It is often convenient for the parties to a bargaining relationship to have an alternate forum in which to address issues. Some matters, either inherently or because of their particular history on campus, are better dealt with in the often more leisurely-paced or more open and more apparently deliberative forum of the senate. Bargaining issues must be resolved by the time a new agreement goes into effect, by the time the new budget year begins, before the expiration of the old contract, before the rival union collects enough signatures to file for a

new election, or before the faculty return for the new term. Many issues benefit from a more prolonged and open debate so that the rationale is more clearly understood and accepted by the university community. Other issues, perhaps too "hot" for the parties to deal with at the bargaining table, cool down a bit during the open debate on the floor of the senate. If the bargaining relationship becomes too adversarial — if every issue becomes an occasion to bash the other side — it is helpful to have a senate where institutional rivalries do not necessarily drive the debate. Often matters can be resolved in the senate that would be politically or psychologically impossible between the union and management. While the senate can be drawn into the fray, it need not and can serve as a designated neutral zone and a place where communications can be kept open.

THE CALIFORNIA MODEL

California's higher education collective bargaining law specifically recognizes the importance of collegial governance mechanisms even as it mandates faculty collective bargaining. First, it declares in the preamble to the statute that:

> The Legislature recognizes that...consultation between administration and faculty...is the long-accepted manner of governing institutions of higher learning and is essential to the performance of the educational mission of such institutions, and declares that it is the purpose of this act to both preserve and encourage that process. Nothing contained in this chapter shall be construed to restrict, limit or prohibit the full exercise of the functions of the faculty in any shared governance mechanisms or practices including the Academic Senates...with respect to policies on academic and professional matters....[2]

Later on, in the portion of the statute defining the scope of bargaining, the law excludes from scope:

> Criteria and standards to be used for the appointment, promotion, evaluation, and tenure of academic employees....[3]

and states that these shall be the "joint responsibility of the Board of Trustees and the Academic Senate." If the Trustees withdraw this item from the "joint responsibility," then, the law goes on to say, it becomes part of faculty union bargaining.

THE CSU ACADEMIC SENATE

The reference to the importance of the collegial relationship and to the Academic Senate has encouraged the administration, the faculty, and the union leadership to respect the senate and its jurisdiction. After an initial period following the election of an exclusive bargaining agent and the commencement of collective bargaining in which it seemed confused as to its role, the systemwide Academic Senate is stronger than ever. One of its first actions in response to the advent of collective bargaining, was to commence a study of its role and jurisdiction. After long debate, it issued a paper entitled "Responsibilities of Academic Senates within a Collective Bargaining Context" in 1981, which was clarified in a series of letters between the Chancellor and the Chair of the Senate. An important line of demarcation was drawn when the senate declared that it would not participate in the process of collective bargaining, and that "except under emergency or crisis conditions,:

> matters affecting wages, hours of employment, and other terms and conditions of employment shall not be considered by the senate...(and) The Academic Senate shall endeavor to ensure that educational and professional matters do not become subjects of bargaining.[4]

Since those statements were written, the senate has generally kept to its jurisdiction even though it has, at times, been tempted to enter disputes between the bargaining parties, indeed, as those parties have been tempted to address senate issues. The wisdom of avoiding this temptation has kept all the parties relatively honest.

For example, in the initial contract the parties lengthened the probationary period preceding the award of tenure. Defended by the contracting parties as a "job security" issue and therefore, well within the scope of bargaining, the senate asserted that this was an "educational" issue over which it had "joint responsibility" with the Board of Trustees. The matter was discussed at length by all the parties and resolved when the parties determined to be more vigilant in discerning the educational implications of such matters, and in deferring them to the Senate-Trustee forum in the future. The Senate and the Board of Trustees have since jointly studied and issued a policy paper on the use of student evaluations of faculty for retention, promotion and tenure, and that paper has been implemented through Trustee policy. This policy is now part of every faculty evaluation, which are provided for in the collective bargaining agreement.

THE TRIPARTITE PROCESS

Some months ago, the president of the faculty union, the chair of the systemwide academic senate and the Vice Chancellor for Faculty and Staff Relations at the California State University met to consider a coordinated approach for the support of the University's budget request in Sacramento. We called it the "Tripartite Process." Any of us could suggest an issue for discussion in this forum. What evolved, then, was the understanding that the issues would be freely discussed among the three parties, and a consensus sought. Once achieved, that consensus would represent the essence of the

agreement in collective bargaining, and the essence of an agreement in consultation with the senate. The administration would then sit down at the bargaining table with the union and negotiate changes to the existing bargaining agreement. It was anticipated, since consensus had already been reached in the tripartite process, that negotiations would proceed with relative ease. A parallel consultative process, consultation between the Trustees and the systemwide senate would result in a modification of systemwide policies as appropriate.

I suggest that this tripartite process is basically sound. It brings together the perspectives of the collective bargaining agent, as well as the academic senate. It does not require either to reach an agreement; and, indeed, while it didn't happen in our experience, issues can be removed from the tripartite process by any party unilaterally and taken to the bargaining table or the consultation room for exclusive resolution there; although I would anticipate that that removal would be unusual.

The positive aspects of this process are many. The first is that the full spectrum of faculty leadership can be brought together in a conversation about important issues without the organization having to take political positions. Furthermore, the organizations are spared the turf battles that often occur, especially when the proper forum for the issues is not crystal clear. The institution lessens the risk of reaching an agreement in either forum, and then seeing that agreement attacked as unsound or inappropriate by the missing third party. It would appear to be to the advantage of both the union and the senate to be free of that risk as well.

Both the union and the senate should also be free from the paranoia and the suspicion that could be generated by the administration meeting with the other on potentially the same issues even though the law would protect the union against the administration bargaining with a third party. The fear that the administration is undercutting the union as it meets with the senate (or vice versa) is one that all should be happily rid of.

There are also advantages for the administration. For one, all the perspectives that they should consider will be in the same room at the same time and can be explored, considered, balanced and weighed together at once. Differences among them can be resolved more easily. Additionally, agreements reached will have the advantage of the full support of most factions of the faculty.

My assessment of the tripartite process is that it can be helpful in any kind of relationship. If the parties enjoy a good, cooperative comfortable labor-management relationship, bringing all together should facilitate agreement and enhance support for the results. In troubled relationships, the open discussion should reduce the level of mistrust and paranoia that any two of the three parties are conspiring to undo the absent third party. Even where the union and management are having difficulty talking to one another, the senate leadership can, perhaps, be of significant help in facilitating that communication. I recognize that this may be perceived by any of the participants as a risky endeavor and it may take courage to attempt it in the face of constituent skepticism. Nevertheless, I believe that advantages so outweigh the downside, it is worth exploring. But, I'm worried about the California experience. Perhaps, it is too soon to bring the union and the senate together to work on issues. Or, perhaps, unions and senates can coexist so long as they don't attempt to do so too intimately. The most worrisome possibility is that the difference in their constituencies may make them — and their visions of the academy — incompatible.

As we enter the third decade of faculty collective bargaining, the academy will have to learn to accommodate the needs of the part-time faculty. Whether the senates will adapt remains to be seen.

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The California Higher Education Employer-Employee Relations Act is found in the California Education Code, Section 3560, et seq.

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